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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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September 29, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TWB-204
Washington, D.C. 20554

Re: *Ex Parte* – Access Charge Reform, CC Docket No. 96-262 Request for Emergency Relief of the Minnesota CLEC Consortium and the Rural Independent Competitive Alliance, DA 00-1067; Mandatory Detariffing of CLEX Interstate Access Services, DA 00-1268

Dear Ms. Salas:

Yesterday, Leon Kestenbaum and Michael Fingerhut of Sprint and Len Cali and I of AT&T met with Jordan Goldstein, Legal Advisor to Commissioner Ness. We spoke general regarding each companies' position in the above referenced proceedings as well as a joint proposal that would eliminate the growing problem of exorbitant CLEC access charges. Attached is a copy of the document used as an outline to discuss our joint position. One issue that was discussed, but not mentioned in the attachment, is the ability of "rural CLEC's" to draw from the $650m USF created under CALLS. Also, attached is a copy of a letter sent by Cavalier Telephone to its customers who use AT&T as their long distance provider. This letter was also discussed in the meeting.

In accordance with Section 1.1206(a)(2) of the Commission's rules, two copies of this notice are being submitted to the Secretary of the Commission for inclusion in the public record of the above-captioned proceedings.

Very truly yours,

Attachments (2)

cc: Jordan Goldstein

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I. THE COMMISSION SHOULD RESOLVE EXPEDITIOUSLY THE PROBLEM OF HIGH-PRICED SWITCHED ACCESS SERVICES BY CLECS

- The issue of excessively priced CLEC switched access service is ripe for decision, having been presented to the Commission in a number of proceedings over the past two years.

- The magnitude of the problem posed by excessively priced CLEC switched access services is immense. Sprint estimates that the total industry-wide amount by which CLEC access bills exceed those that would have been due had the CLECs charged ILEC rates to be $1 Billion annually and growing. Although CLECs currently account for only 2% of switched access MOUs, Sprint estimates that CLEC access bills amount to roughly 10% of total switched access bills.

- The continued uncertainty as to whether CLECs can compel IXCs to pay such excessive charges has frustrated the ability of AT&T and Sprint to settle these disputes. The reality is that many CLECs continue to believe that they have the right to compel IXCs to purchase their services at any rate they set, and thus have no interest in lowering their rates.

- In the absence of a Commission ruling, numerous judicial and administrative actions have been filed and the number of these actions is likely only to grow.

- The Commission's decision in the *MGC* case does not provide adequate guidance because it was decided on very narrow grounds and applies only where an IXC is attempting to cancel service that the IXC had affirmatively ordered. In the vast majority of situations facing AT&T, for example, AT&T never issued an ASR to these high-priced CLECs and told them in writing that AT&T did not want to purchase their switched access services.

- The Commission's failure to resolve this problem causes significant harm to consumers of long-distance service, who are bearing the cost of these excessively priced CLEC access services.

II. THE IDEAL LONG-TERM SOLUTION TO THIS PROBLEM WOULD BE FOR THE COMMISSION TO PROHIBIT CLECS FROM TARIFFING SWITCHED ACCESS RATES THAT EXCEED THOSE OF THE ILEC IN THE SAME TERRITORY.

- Both originating and terminating switched access services are subject to significant market failures.

- CLECs have a bottleneck on switched access to and from their local end user customers. By contrast, CLECs compete with the ILECs for local end user customers, and thus have an incentive to underprice ILECs on retail service, often dramatically. CLECs then seek to take advantage of their bottleneck on access by

overcharging for access, and using those revenues to cross-subsidize their local exchange offerings.

- **These market failures have made it possible for many CLECs to set excessive access rates in their switched access service tariffs, rates that are many times higher than those charged by the ILEC in the same geographic territory, while simultaneously arguing that the filed-tariff doctrine compels IXCs to purchase switched access services at their excessive rates.**

- **ILEC rates are more than fully compensatory for efficient providers, which explains why numerous CLECs have filed tariffs offering switched access services at rates comparable with the ILECs or have voluntarily agreed to charge ILEC rates.**

- **AT&T and Sprint cannot remain competitive while being compelled to purchase excessively-priced CLEC switched access services.**

- **The ideal long-term solution to this problem is for the Commission to prohibit CLECs from tariffing switched access rates that exceed ILEC rates. To the extent that CLECs desire to charge above-ILEC rates, they should be permitted to do so only by negotiating voluntary switched access agreements with IXCs, or recover the excess directly from their end-user customers.**

III. THE COMMISSION, AT A MINIMUM, SHOULD CONFIRM THAT CLECS DO NOT HAVE THE POWER TO COMPEL IXCS TO PURCHASE THEIR EXCESSIVELY PRICED SWITCHED ACCESS SERVICES.

- **In the absence of a Commission ruling prohibiting CLECs from tariffing switched access rates that exceed those of the ILEC in their territory, the Commission should, at a minimum, confirm that CLECs may not compel IXCs to purchase their excessively-priced switched access services.**

- **No provision of the Communications Act or the Commission's rules requires an IXC to purchase a CLEC's switched access services, so IXCs have the right to choose in the first instance to decline to purchase a CLECs switched access service.**

- **Furthermore, IXCs May Cancel Existing Orders For Switched Access Services Under The Commission's *MGC* Decision.**

- **Once the Commission confirms that IXCs have the right to decline to purchase excessively-priced CLEC switched access services and requires mandatory detariffing of above-ILEC access rates, there is every reason to expect that IXCs and CLECs will be able to negotiate voluntary switched access agreements or that CLECs will file tariffs offering switched access services at rates comparable to the ILECs.**

Cavalier Telephone

"Your Local Telephone Company"

Dear Valued Cavalier Customer:

We have been notified by American Telephone & Telegraph (AT&T) that they will no longer be providing residential long distance service to Cavalier Telephone customers. As a result of this, your authorization is needed to switch your long distance carrier.

We are pleased to offer our customers the following special program to greatly lower your monthly telephone bill:

Price Comparison

	Monthly Fee	State to State Price Per Minute*	In-State Price Per Minute*
AT&T One Basic Rate	$0.00	16.0¢	16.0¢
Cavalier Basic	$0.00	9.0¢	9.0¢
AT&T One Rate Seven Cents	$5.95	7.0¢	12.0¢
Cavalier Enhanced	$5.00	7.0¢	7.0¢

By choosing Cavalier long distance, you will save on monthly long distance charges and have the savings shown to you on one easy to read telephone bill. Cavalier Telephone is always looking for ways to serve you, our valued customer, and we are always looking for new ways to earn your business.

For your convenience and to expedite your cost savings, simply return the enclosed, self-addressed, stamped postcard by September 15th. If you wish to switch to another long distance, contact our customer service department.

Sincerely,

Jeffrey C. Snyder

Jeffrey C. Snyder
Vice President of Marketing

*AT&T bills in 1 minute increments, with a 1 minute minimum;
Cavalier Telephone bills in 6-second increments, with a 30-second minimum.